



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

October 18, 2000

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The Honorable Pat Danner
U.S. House of Representatives
Washington, DC 20515

Dear Ms. Danner:

I am responding to your letter to Commissioner Rossotti dated September 5, 2000, on behalf of your constituent, [REDACTED] asked how the Internal Revenue Service handles amounts written off by telephone companies because of "slamming."

On September 20, 2000, [REDACTED] of my office called [REDACTED] to gather more information concerning his inquiry. [REDACTED] was not available, but his wife, [REDACTED], gave [REDACTED] the following information. Twice in the past two years, their local telephone service provider added unauthorized items (such as voicemail) to the [REDACTED] telephone service and billed the [REDACTED] for these services as part of their regular, monthly bill. [REDACTED] discovered the error each time after six to eight months. She contacted the provider to have the service removed from their account. Each time, the provider removed the additional service and credited the [REDACTED] account for the unauthorized charges.

[REDACTED] wants to know whether their telephone service provider can write off refunds to customers for unauthorized service charges. He does not believe companies should receive a tax benefit from improper conduct.

The privacy and disclosure laws prohibit the IRS from making comments to third parties about a particular income tax return filed by another taxpayer, such as a telephone company. However, the following general information may be helpful in answering [REDACTED]

Companies can deduct all "ordinary and necessary expenses" incurred in carrying on their trade or business. Generally, courts have concluded that corporations, including telephone companies, can deduct customer refunds as expenses [§ 162(a) of the Internal Revenue Code].

A telephone company may claim deductions for customer refunds, such as those paid to the [REDACTED], however, this fact does not translate into a tax savings. The company cannot refund a payment to the customer and therefore claim a deduction unless the company has previously included the refunded amount in income. I hope this information is helpful to you and your constituent. If I can be of further help, please contact me or [REDACTED], of my office. You can reach either of us at (202) 622-4950.

Sincerely,

Associate Chief Counsel
(Income Tax & Accounting)

By: _____
Douglas A. Fahey
Acting Chief, Branch 5